Health Acts Amendment Act, 1890, Section 51. That Act, however, contains no definition of a public entertainment and in the circumstances this case cannot be said to be of any assistance.

Having thus arrived at the conclusion that the operation of the Juke Box constituted a 'public amusement' within the meaning of the Enactment, the question remains whether that 'public amusement' was 'carried on' in the appellant's premises so as to bring those premises within the description of a 'place of public amusement'.

No doubt the expression carry on "implies a repetition of acts", (*per* Brett L.J. — *Smith v. Anderson*[5]) but here there was evidence to support the inference that the Juke Box was an ordinary and usual part of the equipment of the premises and no attempt was made to negative that inference. Again it is clear from the case of *Marks v. Benjamin*[6] that to constitute the offence of keeping an unlicensed place of entertainment it is not necessary that the place in question should be exclusively appropriated to the purposes of such entertainment, and in the case of *Pharmaceutical Society v. Hornsey*[7] it was held that a party who kept a shop for repairing clocks but who sold poison in it was properly convicted for keeping an open shop for retailing poisons in contravention of the Pharmacy Act, 1868. Again for the purposes of section 2 of the Theatres Act, 1843, it was held that where premises were used on a few occasions only for the performance of stage plays they were "had or kept" for that purpose (*Shelley v. Bethell*[8]) and in that case Lord Coleridge C.J. rested himself very largely on the consideration that to decide otherwise might well tend to defeat the objects of the statute.

In all the circumstances of the case I am satisfied that there were grounds on which the learned Magistrate was entitled to hold that the appellant's premises were on the material date a place of public amusement and it is admitted that they were not licensed as such. The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons.*

PUBLIC PROSECUTOR v. V. F. STUART

[A. Cr. J. (Sutherland J.) January 25, 1957]

[K. L. — Criminal Appeal No. 86 of 1956]

Road Traffic — Driving under the influence of drink — Incapable of having proper control over vehicle — Repeated offence — Sentence.

The respondent was charged that he "being the driver of a motor car did drive it on a public road under the influence of drink to such an extent as to be incapable of having proper control over the said vehicle, and thereby committed an offence under reg. 6(1) of the Motor Vehicles (Driving Offences) Proclamation". He was convicted and fined $500 or four months' imprisonment. The Public Prosecutor appealed against this penalty as being manifestly inadequate as the respondent had been previously convicted of a similar offence, for which he was sentenced to imprisonment, and contended that the sentence should be enhanced.

Held: (1) by his repeated offence, it was apparent that the respondent was imperilling the safety of the road users;

(2) the punishment imposed in this case was manifestly inadequate.

The learned Judge accordingly enhanced the sentence by sentencing the respondent to three months' imprisonment in addition to the fine of $500 or four months' imprisonment already imposed.

Case referred to:—

(1) *Hallet v. Newton* (1951) 95 Sol. J. 712.

MAGISTRATE'S CRIMINAL APPEAL.

J. P. Kirby (Federal Counsel) for the appellant.

P. G. Lim for the respondent.

Sutherland J. : — In this appeal Mr. J. P. Kirby, Deputy Public Prosecutor, appeared for the Public Prosecutor, the appellant, and Miss Lim appeared for the respondent.

The charge against the respondent was that on the 17th September, 1956, he being driver of a motor car did drive it on a public road under the influence of drink to such an extent as to be incapable of having proper control over the said vehicle and thereby committed an offence under Regulation 6(1) of the Motor Vehicles (D.O.) Proclamation. The respondent was convicted by the learned President of the Sessions Court and, in what I am sure was a genuine endeavour to arrive at the appropriate punishment, the President fined the accused $500 or four months' imprisonment. The Public Prosecutor appealed against this penalty as being manifestly inadequate.

The learned Deputy stated that as the accused had been previously convicted of a similar offence, the sentence was inadequate. For his first offence he was sentenced to imprisonment but for the second offence, only a fine was imposed. The Deputy Public Prosecutor referred to the 1952 volume of the *Malayan Law Journal* at page xiii and to the *Times* newspaper report of the 13th October, 1951, quoting The Lord Chief Justice's pronouncement[1] as to the proper sentence for persons found guilty of driving under the influence of drink — that driving under the influence of drink was one of the worst offences which it was possible to commit, and the question that Magistrates should ask themselves in such cases was whether any reason existed why the offender should not be sent to prison. The Deputy Public Prosecutor contended that the sentence should be enhanced.

Miss Lim for the respondent stated that imprisonment is not mandatory. The President had a discretion which he exercised fairly in all the circumstances.

The learned Deputy in reply stated that the President did not fully appreciate the circumstances.

For his second offence the respondent was liable to a fine of $1,000 or six months' imprisonment or both. I was reluctant to interfere, but it was apparent that the accused, by his repeated offence, is imperilling the safety of road users, and I came to the conclusion that the Public Prosecutor's application was justified and that the punishment imposed was manifestly inadequate. I accordingly enhanced the sentence by sentencing the accused to three months' imprisonment in addition to the fine of $500 or four months' imprisonment already imposed.

Order accordingly.

Solicitors : *Sen & Lim.*

THE RUBBER INDUSTRY (REPLANTING) BOARD v. HONGKONG AND SHANGHAI BANKING CORPORATION

[O. C. J. (Buhagiar J.) July 11, 1956]

[K. L. — Civil Suit No. 149 of 1956]

Bills of Exchange Ordinance, 1949 s. 82 — Cheque made payable "account payee only" — Cheque collected for wrong person — Whether drawer of the cheque has cause of action — Whether bank which collects the cheque has been negligent.

In this case the plaintiffs issued a cheque in favour of one Toh Whye Teck in the sum of $6,762.33 and the cheque was marked "Account payee only". In some way unknown to the plaintiffs the cheque came into the possession of some unauthorised person. Subsequently one Lee Man Choi opened an account with the defendant bank in the name of Chop Toh Waye Teck and the cheque in favour of Toh Whye Teck was paid into this account. The plaintiffs claimed damages.

Held: (1) in the circumstances of the case there had been no delivery of the cheque to the payee and therefore the plaintiffs remained the true owners and were entitled to maintain the action;

(2) the defendant bank had not discharged the onus of proving that they have acted without negligence and are not entitled to the protection of section 82 of the Bills of Exchange Ordinance, 1949, and were liable to the plaintiffs for damages for conversion of the cheque.

Cases referred to :—

(1) *Bute (Marquess) v. Barclays Bank Ltd.* (1953) 3 All E.R. 365, 368.

(2) *Midland Bank Ltd. v. Reckitt* (1933) A.C. 1, 14.

(3) *Commissioners of Taxation v. British, Scottish & Australian Bank Ltd.* (1920) A.C. 683.

(4) *Norman v. Reckitts* (1886-7) 3 T.L.R. 182.

(5) *Thairlwall v. Great Northern Rly. Co.* (1910) 2 K.B. 509.

(6) *Ladbroke & Co. v. Todd* (1913-4) 30 T.L.R. 433.

(7) *Matthews v. Brown & Co.* (1893-4) 10 T.L.R. 386.

(8) *Pennington v. Crossley* (1897) 13 T.L.R. 513.

(9) *Re Deveze, ex parte Cote* (1873) 9 Ch. App. 27.

(10) *Lloyds Bank v. Chartered Bank of India, Australia & China* (1929) 1 K.B. 40, 69.

(11) *Lloyds Bank Ltd. v. E. B. Savory & Co.* (1933) A.C. 221.

(12) *Commissioners of State Savings Bank v. Permewan, Wright & Co.* 19 C.L.R. 457.

(13) *Morison v. London County & Westminster Bank* (1914) 3 K.B. 356.

CIVIL SUIT.

R. H. V. Rintoul for the plaintiff.

M. Edgar for the defendant.

Buhagiar J. : — In this case there is an agreed statement of facts as follows :

The plaintiff is a statutory corporation constituted by the Rubber Industry (Replanting) Fund Ordinance, 1952 and has its offices at Mercantile Bank Chambers, Kuala Lumpur. The defendant is a corporation with limited liability incorporated in Hongkong and carrying on the business of bankers in towns throughout the Federation of Malaya and has a branch at No. 2, Ampang Street, Kuala Lumpur.

In July 1954 one by the name of Toh Whye Teck was entitled to payment of the sum of $6,762.33 from Fund "A" cess and in consequence a cheque was drawn by the plaintiff in favour of the said Toh Whye Teck in the sum of $6,762.33. The cheque was drawn on the plaintiff's fund "A" cess account with the Kuala Lumpur branch of the Chartered Bank of India, Australia and China and was signed by the late Mr. Yong Shook Lin, then a member of the Board and by the Secretaries and Treasurers Messrs. Peat Marwick Mitchell & Co. the latter signature having been made by Mr. Villiers a partner in the firm. The cheque had a rubber stamp crossing marked "Account payee only" in large capital letters.

The said cheque was dispatched by the Secretaries and Treasurers in the usual course of business but in some way unknown to either the plaintiff or the